

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

October 23, 2018

The Zoning Board of Appeals held a public hearing at 7:04 P.M., Tuesday, October 23, 2018, in the Auditorium of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were Acting John Sergi and members Glenna Gelineau, Sarah Hankins, Mark Hickernell and Edward McCarthy.

Mr. Sergi: Tonight we have one case, Case No. 2018-29, Petitioner, Gary J. Ainsworth, Owner, and it is a petition for a variance related to a carport.

The first order of business tonight, is can I have a motion to accept the minutes of October 11, and October 16, 2018?

On motion of Mr. McCarthy, seconded by Ms. Hankins, the board voted to accept the minutes of October 11 and October 16, 2018.

Mr. Sergi: May the clerk please read the petition in Case 2018-29?

The clerk then read the petition of Gary J. Ainsworth and Debra A. Aberton for a variance to allow for the construction and use of a carport. Location and Zoning District: 25 Fairmont Avenue, Residence A-4 District.

Mr. Sergi: May we hear from the petitioner or the petitioner's representative, please?

Bret Francis, Esquire, Scafidi and Juliano, 10 Hammer Street, Waltham came forward.

Mr. Francis: First, my best condolences to Chair Rando and a speedy recovery. Hope she gets back real soon.

(Mr. Francis then read his brief into the record.)

Mr. Francis: Do you have any questions?

Mr. Sergi: I have one. So your intention is not to enclose this? It is just to leave it open the way it's depicted on the illustration?

Mr. Francis: That is correct.

Me. Sergi: And the roof, I can't make out the roof, is it - - -

Mr. Francis: It's going to be a solid roof. It looks like pergola where it's just the boards. But that's the idea to look like it from the street. So if you're driving by, it would look like it is opened. But, no, it will be a solid roof which actually is why it counts towards the lot area. In discussion with Associate Counsel, we wondered and questioned whether or not a carport would actually increase the lot coverage of the locus. We had to come here anyway for variances in the rear and front yard setback so we figured we'd also get a variance for the lot coverage while we are at it rather than find out that it doesn't apply.

Ms. Hankins: He mentions the lot coverage on the plan, you know the building inspector has that.

Mr. Francis: Absolutely. So here we are.

Mr. Sergi: We have a list here from abutting neighbors. Is this what it is? So you went and asked all your abutting neighbors and everybody is in agreement pretty much?

Mr. Francis: That is exactly my understanding from that as well as a couple of the neighbors appeared here tonight and are in favor of the project as well.

Mr. Sergi: I'll open up to questions from the board.

Ms. Hankins: I guess I see pretty clearly how the location of the locus on the corner creates a hardship on the frontage. But I'm not so sure how it does on the lot coverage. You just want to increase the lot coverage and it doesn't really seem to be hardship attached to that.

Mr. Francis: Well the hardship would be that you would have to remove the shed. In other words, if you want to comply - - -

Ms. Hankins: I mean, there's already too much stuff on the property.

Mr. Francis: That is the hardship for a simple carport, not a garage. A simple carport, two poles and a cover over your cars. They are not creating a driveway here. They already park there. To require them to remove the shed so that they comply, or even a portion of the house, yes, you're right, that is the nature but with such a project and the nature of this case, I think that's an undue hardship.

Ms. Hankins: Would removal of the shed put you back in compliance?

Mr. Francis: I don't know.

Ms. Hankins: So you're saying that basically it would be having to sort of augment the existing home is the only option.

Mr. Hickernell: So did you bring the lot coverage issue of the carport to the building inspector or did he come up with that?

Mr. Francis: No. Actually the engineer in consultation. When it comes to me, it's already been decided that the building department was seeking that as part of our relief. So when I file it prior to filing the petition with the building department they do a review prior to filing with the law department and by that time it was already requested. In other words, he's aware of the three variances that we are seeking. But it was in consultation prior with the engineer that the question came up. Do we even really need lot coverage and it was determined in his discussion that a variance for this was needed.

Mr. Hickernell: I certainly don't have a problem with the setback variances. I mean, they are not adding anything. But not having a carport doesn't seem like a huge burden on the land.

Mr. Francis: I don't think it's not a burden on the land. Again when you drive by it will look like a pergola if anyone is going down on that side street.

Mr. Sergi: Is there anyone here tonight that would like to speak or raise their hands in favor of the petition?

(Five people raised their hands in favor.)

Mr. Sergi: Is there anyone seeking information? Seeing none.

Is there anyone in opposition? Seeing none. We'll close that part of the hearing.

Mr. Hickernell: Did any one of the neighbors want to say anything?

Mr. Sergi: I asked. I'll offer it again. Do any of the neighbors want to speak in favor?

Carol Baclawski, 35 Fairmont Avenue: Thank you very much for notifying me with a postcard. I appreciate that. I am fine with this carport. Gary and Deb are wonderful neighbors. We are very lucky to live where we live. As I back out of my driveway, I am sure the carport will not present any hardships to me.

Mr. Sergi: You probably are the most affected, I would think.

Ms. Baclawski: Right and so far I haven't taken out any trash cans backing out.

Kenneth Baclawski, 35 Fairmont Avenue: I'm Carol's husband. So I think it would be a great addition to the neighborhood, actually. It would actually look very nice there. We are the most affected by it because we are just across the street and we think it would be a great addition.

Richard Neshe, 14 Elmwood Avenue: I am right diagonal from that and all my windows will overlook it and I have no problem with it. Everything they do to the house, they keep the integrity of the 1905 house right down to shutters, siding, roofing and all that stuff. So everything they do, it's perfect. So I just want to say I'm in favor.

Mr. Sergi: You can proceed with your findings of facts.

On motion of Mr. Hickernell, seconded by Mr. McCarthy, the board voted to waive the reading of the Proposed Findings of Fact since they have been on file and are available to the public.

Ms. Hankins: I think we should have something in there. I don't feel there's enough in there that's talking about the hardship related to the lot coverage.

Mr. Francis: I will be happy to add something. It will be paragraph seven but it will be an additional paragraph and I will get that to Ms. Doucette setting forth the removal of the shed just to comply with the maximum lot coverage.

Mr. Sergi: Do you want to word that?

Mr. Francis: The corner lot pre-existing structure as well as the hardship - - - So is this just in regard to the hardship aspect? Okay.

"Here Petitioner's hardship concerns removal of the shed and/or portion of the house in order to comply with the maximum lot coverage requirement."

Mr. Sergi: That will do it. And that will be number 7, did you say?

Mr. Francis: Yes, pushing seven and eight to eight and nine.

Mr. Sergi: Thank you for that. And we can move forward with your decision, if you'd like.

On motion of Mr. Hickernell, seconded by Mr. McCarthy, the board voted to waive the reading of the Proposed Decision since it has been on file and has been available to the public.

Mr. Sergi: Do I have a motion on the Proposed Findings of Fact, as amended.

On motion of Mr. McCarthy, seconded by Ms. Gelineau, the board voted to adopt the Proposed Findings of Fact as amended to be the Findings of Fact of the board.

Roll call: Mr. Hickernell, yes; Ms. Hankins, yes; Ms. Gelineau, yes; Mr. McCarthy, yes and Mr. Sergi, yes.

Mr. Sergi: May I have a motion for the decision, please.

On motion of Mr. McCarthy, seconded by Ms. Gelineau, the board voted that the Proposed Decision be the decision of the board.

Roll call: Mr. Hickernell, yes; Ms. Hankins, yes; Ms. Gelineau, yes; Mr. McCarthy, yes and Mr. Sergi, yes.

Mr. Sergi: It is granted. Congratulations.

On more motion is in order.

On motion of Mr. McCarthy, seconded by Mr. Gelineau, the board voted to adjourn at 7:25 P.M.



